

DECLARATION 43

REPEAL OF ARTICLE 23(b)

DECLARATION.—1. Article 23(b) is hereby repealed.

2. For the period from 6 November 1961 to the date of publication of this present Declaration, Article 23(b) is to be read as follows:

- (b) **Limitation.**—A name that is in general current use and has been available for at least 50 years shall not be displaced after 1960 by an unused senior synonym.
 - (i) A name is to be considered as in general current use when, in the immediately preceding 50 years, it has been applied to a particular taxon, as its presumably valid name, by at least five different authors and in at least ten publications.
 - (ii) A senior synonym is to be considered unused when, during the immediately preceding 50 years, it has not once been applied to a particular taxon as its presumably valid name. An unused senior synonym employed after 1960 in violation of the provisions of Article 23b, whether explicitly to replace the junior synonym or not, does not thereby lose its status as an unused name.
 - (iii) The mentioning of a name in a synonymy or its mere listing in an abstracting publication, or in a nomenclator or other index or list of names does not constitute usage in the sense of Article 23b.
 - (iv) Each citation of a name is to be considered on its own merits regardless of the nature or the title of the work in which the name appears.
 - (v) A zoologist who considers the existence of an unused senior synonym in the literature a source of confusion may apply to the Commission to place the name on the appropriate Official Index.
 - (vi) A zoologist who considers that an unused senior synonym should displace a junior synonym that is in general current use, may apply to the Commission for a ruling under the plenary powers.
 - (vii) Nothing in Article 23b affects the operation of the Law of Homonymy. A name rejected under the provisions of Article 23b is rejected for the purposes of the Law of Priority but not for those of the Law of Homonymy.
 - (viii) An unused senior synonym rejected under the provisions of Article 23b is termed a *nomen oblitum*.
- 3. The repeal of Article 23(b) involves ipso facto the repeal of Article 23(a)(i), and Article 23(a) is now to be read as follows:
 - (a) **Exceptions.**—A name that is not the oldest available name is nevertheless the valid name of the taxon in question if the Commission has expressly validated it.

ABROGATION DE L'ARTICLE 23(b)

DECLARATION.—1. Par la présente Déclaration l'Article 23(b) est abrogé.

2. Pour la période du 6 novembre 1961 jusqu'à la date de publication de la présente Déclaration, l'Article 23(b) doit être lu comme suit:

(b) **Limitation.**—Un nom qui est en usage courant et général, et a été utilisable pendant 50 ans au moins ne sera pas remplacé après 1960 par un synonyme plus ancien inemployé.

(i) Un nom doit être considéré comme en usage courant et général lorsque, au cours des 50 ans immédiatement précédents, il a été appliqué en tant que nom valide présumé, à un taxon particulier par cinq auteurs différents au moins et dans au moins dix publications.

(ii) Un synonyme plus ancien doit être considéré comme inemployé lorsque, au cours des 50 ans immédiatement précédents, il n'a pas été appliqué une seule fois, en tant que nom valide présumé, à un taxon particulier. Un synonyme plus ancien inemployé utilisé après 1960 en violation des dispositions de l'Article 23b pour remplacer, explicitement ou non, le synonyme plus récent, ne perd pas de ce fait son statut de nom inemployé.

(iii) La mention d'un nom dans une synonymie ou sa simple inclusion dans une publication signalétique, ou dans un nomenclateur ou autre index ou liste de noms, ne constituent pas des usages au sens de l'Article 23b.

(iv) Chaque citation d'un nom doit être considérée en elle-même, indépendamment de la nature ou du titre du travail dans lequel le nom apparaît.

(v) Un zoologiste qui estime que l'existence, dans la littérature, d'un synonyme plus ancien inemployé est une source de confusion peut demander à la Commission de le placer dans l'Index Officiel approprié.

(vi) Un zoologiste qui estime qu'un synonyme plus ancien inemployé devrait être substitué à un synonyme plus récent en usage courant et général peut s'adresser à la Commission afin qu'elle exerce ses Pleins Pouvoirs à cette fin.

(vii) Rien dans l'Article 23b n'affecte l'action de la Loi d'Homonymie. Un nom rejeté conformément aux dispositions de l'Article 23b est rejeté au regard de la Loi de Priorité, non de la Loi d'Homonymie.

(viii) Un synonyme plus ancien inemployé rejeté conformément aux dispositions de l'Article 23b est désigné comme un nomen oblitum.

3. L'abrogation de l'Article 23(b) entraîne ipso facto celle de l'Article 23(a)(i), et l'Article 23(a) doit désormais être lu comme suit:

Exceptions.—Un nom qui n'est pas le plus ancien nom utilisable est néanmoins le nom valide du taxon en question si la Commission l'a expressément validé.

HISTORY OF THE CASE (Z.N.(S.) 1543)

The conflict between the supporters of a simple Law of Priority and those who support a Law of Prescription is as old as the first attempts to regulate zoological nomenclature. After the publication of the *Règles internationales de la nomenclature zoologique* in 1905, the first important step towards the moderation of the Law of Priority was the adoption by the Monaco Congress in 1913 of the Plenary Powers Resolution. Attempts to restrict the Law of Priority yet further, by incorporating in the Code an explicit Law of Prescription, or Conservation, were made at the Paris (1948) Congress (*Bull. zool. Nomencl.* 3 : 159-61, 177); at the Copenhagen (1953) Congress (*ibid.* 7 : 154-188; 8 : 5-108; *Copenhagen Decisions* : 25-6, 119-22); and at the London (1958) Congress (*Bull. zool. Nomencl.* 14 : 42-6; 15B : 621-42, 911-3, 1080-8, 1244-50). The end of this historical phase was marked by the inclusion of Article 23(b) in the International Code of Zoological Nomenclature published in 1961.

The wording of the Article in the 1961 Code was that which had been adopted by the London (1958) Congress. The Editorial Committee charged with preparing the Code for publication found the wording ambiguous and confusing, but clearly had no authority to alter it. Critical comments, directed at both the matter and the drafting of the Article, began to reach the Commission's office in January 1962, by which time preparations for the Washington (1963) Congress had already begun. The subject of Article 23(b) became "Case No. 3" of the Commission's agenda for that Congress and papers relating to it were published in *Bull. zool. Nomencl.* 19 : 345-52; 20 : 79-80.

At its meetings in Washington (see *Bull. zool. Nomencl.* 21 : 168-70), the Commission considered several proposals for the amendment of Article 23(b), none of which was adopted. A motion to ask the Secretariat to test the Article in terms of an explanation put forward by Dr. Key and refer proposals back to the Commission for its amendment by means of a Declaration was passed. A motion to delete the Article was defeated by 11 votes to 10.

The XII International Congress of Entomology, held at London in July 1964, adopted the following resolution proposed by its section on Taxonomy:

"Whereas, priority, beginning with Jan. 1, 1758, is the basic principle of entomological nomenclature as it is of zoological nomenclature in general; and

Whereas, the International Commission on Zoological Nomenclature has Plenary Powers to suspend the application of the International Code of Zoological Nomenclature for the purposes of promoting stability and universality, or of avoiding serious confusion; and

Whereas, these Plenary Powers suffice for the truly serious cases of long usage of biologically important names; and

Whereas, the new Code contains 'escape clauses', such as those concerned with family names, that are aimed at promoting stability in various aspects of nomenclature without either application of Article 23(b) (the so-called 50-year rule) or use of the Plenary Powers; but

Whereas, Article 23(b), the Limitation on the Law of Priority, is considered to have serious weaknesses and in its present form to be objectionable and unnecessary to entomology, and even actually detrimental to it, to a degree that could not be remedied by any mere interpretative declaration;

Therefore, be it resolved that the XII International Congress of Entomology directs the Permanent Committee of the International Congresses of Entomology to propose and strongly recommend to the International Commission on Zoological Nomenclature that the field of entomology, in the broad sense, be exempted from the provisions of paragraph (b) of Article 23 of the International Code of Zoological Nomenclature. For the purposes of this resolution, entomology in the broad sense is defined as the study of Hexapoda, Arachnida and Myriapoda."

Meanwhile, sustained attempts had been made to draft an interpretative Declaration on Article 23(b), but with inconclusive results: some votes against the draft expressed dissatisfaction with its wording rather than opposition to the principle embodied in it. Accordingly, the Secretary to the Commission (Dr. G. Owen Evans) proposed on 24 May 1965 that a small committee be set up "representing taxonomists working on different Classes of the Animal Kingdom to gather the opinions of their colleagues on Article 23(b), particularly to itemize objections to the Article, and to make suggestions as to how the Article could be modified so as to be acceptable to the majority in their special fields of study". This suggestion was accepted by the President of the Commission (Dr. Alden H. Miller) on 26 June 1965, but unfortunately the steps that he immediately took to set up such a committee were interrupted by his death in October 1965. Fortunately the Acting President of the Commission (Dr. L. B. Holthuis) was able to initiate steps in this direction shortly after his election in the following month.

In February 1966 the Commission considered a proposal to suspend Article 23(b) until the next International Congress of Zoology, when the President's subcommittee could be expected to present its report. In response to misgivings expressed by Commissioners as to the legality of this proposal, legal opinion was sought. The Commission was advised on 5 October 1966 that it has no power under the existing Code to suspend the general application of any article of the Code. This advice was expressed as follows:

"As requested, I have considered the question whether it is in order by the proposed Declaration 43, to suspend Article 23(b) of the International Code of Zoological Nomenclature. In this connection I have considered the Code, the Constitution and By-Laws of the International Commission on Zoological Nomenclature and the Memorandum and Articles of Association of the International Trust for Zoological Nomenclature. I have also had before me the draft of the proposed Declaration 43.

"In my view it is not in order to suspend Article 23(b) of the Code in the manner proposed. My reasons for this view are as follows:

- "1. Article 79 of the Code, empowers the Commission to suspend the application of any provisions of the Code, subject to an exception, which does not affect the present question, if such application to a

particular case would in its judgment disturb stability or universality or cause confusion. I consider that the power of suspension may be used only in a particular case and that there cannot be a general suspension for all purposes of any provision of the Code.

- "2. If there had been power under Article 79 to suspend Article 23(b), this would constitute an exercise of plenary powers. Article 12(b), of the Constitution of the International Commission prescribes that in cases involving the use of plenary powers an affirmative decision shall be deemed to have been taken only when two-thirds of the votes validly cast are in favour of the proposal. I understand that in this case two-thirds of the votes were not cast in favour of the proposal.

Moreover, it is necessary that not less than six months' notice of the impending vote be given in at least three zoological serials, one published in Europe and one in America, and I understand that in this case the Commissioners were invited to vote under the one month rule.

"To summarize, I feel that Article 79 does not confer the necessary power and, even if it had, I do not think the correct procedure was followed."

This advice was further explained in a letter dated 14 October 1966, which read:

"As I have said, I did consider Article 78 of the Code. Provisional amendments to the Code are also mentioned in Article 77 (3).

"In my view Article 78(a) would not apply to a suspension of any provision of the Code because the question of suspension is covered by Article 79. Moreover the power to issue 'a Declaration (a provisional amendment to the Code)' arises 'if a case before the Commission involves a situation that is not properly or completely covered by the Code'. As I understand the position, no such case has arisen. This seems a case of difficulty in, or dispute as to, interpretation of an Article."

(Events from the opening of the Washington meetings of the Commission to this point were reported in *Bull. zool. Nomencl.* 23 : 258-68.)

Later, in order to assist the work of the Committee on Article 23(b), legal advice was sought as to whether the Commission had power to delete Article 23(b) or to reduce it to the status of a Recommendation. The following answer was sent on 21 June 1967:

"I think that Article 23(b) can either be deleted from the Code or reduced to the status of a recommendation.

"Under Article 77(2) the Commission can submit to a Congress recommendations either for the clarification of the Code, in which case they will presumably appear below the text of the appropriate article of the Code in the Booklet, or for the modification of the Code either by the amendment of an article or by its deletion, or by the addition of a new article. Thus the Commission could prepare for submission to a Congress a recommendation for the modification of the Code by the deletion of Article 23(b). I understand there is likely to be no Congress in the foreseeable future and, if the Commission considered that the substance of this recommendation should have immediate effect, the Commission could, under Article 77(3) render a Declaration embodying the recommendation. This would constitute a provisional amendment to the Code.

"Article 23(b) could then be deleted. If wished, there could be a recommendation by way of clarification, to the same effect, but I do not think that this would be effective until approved by a Congress.

"You will have in mind that if Article 23(b) is deleted, then there will be a consequential amendment in Article 23(a)(i)."

The Committee on Article 23 (b), which consisted of Professor Ernst Mayr (Chairman), Mr. W. I. Follett, M. Jacques Forest, Dr. A. Kaestner, Dr. K. H. L. Key, Mr. R. V. Melville and Dr. P. E. S. Whalley, started work in May 1966. The work of the Committee, which was conducted by correspondence, involved protracted discussions and the consideration of several successive draft interpretative Declarations until, in March 1969, the Chairman of the Committee was able to circulate the final agreed draft to the Commission. This draft (in both English and French; the French text had been prepared by Dr. Forest) was accompanied by the Committee's report to the Commission and by a set of explanatory comments by Professor Mayr, both reproduced below.

REPORT OF THE COMMITTEE ON ARTICLE 23(b)

Mr. President,

Members of the Commission,

The Committee charged with the task to submit to the Commission the draft of a Declaration concerning Article 23(b) has completed its deliberations and believes that submitting the enclosed draft completes the task (except for a possible review of suggestions made by members of the Commission, see below under Recommendations on Procedure).

In order to facilitate the evaluation of the wording of this draft, the Committee and its Chairman (see separate document) offer the following comments:

The task of the Committee

Article 23(b), the "Statute of Limitation", came into force in November, 1961, on the date of publication of the new International Code of Zoological Nomenclature. Several applications for revision of the Article were published in the *Bull. Zool. Nom.*, 19 : 345-352, 1962 and 20 : 79-80, 1963. These applications and additional criticisms were discussed at the International Congress of Zoology in Washington in August, 1963 (*Bull. Zool. Nom.*, 21 : 168-170, 1964). A motion to delete Article 23(b) from the Code was defeated by 11 votes to 10. Instead, the Congress adopted by 14 votes to 7 a motion by Dr. Lemche "that the Secretariat be charged to test Article 23(b), as explained by Dr. Key, and refer back to the Commission as to how the Article should be amended and modified by a Declaration". After the Secretariat had determined the nature of the difficulties with Article 23(b) (see below), the Secretary asked the President of the Commission to appoint a Committee charged with the task of analysing all aspects of the Article and to submit to the Commission the draft of a suitable Declaration. Dr. A. H. Miller, just before his death in October, 1965, had started with the appointment of the Committee, and this task was completed by the Acting President, Dr. Holthuis, who officially

appointed the Committee on May 9, 1966 and charged it "to suggest to the Secretariat of the Commission how Article 23(b) should be amended and modified so that it becomes workable and at the same time acceptable to the great majority of zoologists (including the entomologists)".

The work of the Committee

As a first step, the Chairman asked the Secretariat to specify the difficulties encountered during attempts to apply Article 23(b). In reply to this inquiry Mrs. Margaret Doyle wrote on 8 November 1966: "It is certainly not true at the moment that we have cases on our files where application of an interpretation of Article 23(b) would cause difficulty—the difficulty lies in deciding which interpretation of Article 23(b) to apply". She then listed a series of specific questions to be made clear, for instance the meaning of usage, the status of homonyms, the definition of primary zoological literature, and the relation between usage and the listing of a name in synonymy. The Committee consequently attempted to arrive at a wording that is as free of ambiguities as is humanly possible.

On May 23, 1966, the Chairman asked the members of the Committee to make to him suggestions both as to procedure and to an improved text of the Article. The suggestions made during the autumn of 1966 by members of the Committee and by the Secretariat (8 November 1966) were incorporated by the Chairman in a detailed report which together with a first tentative Draft of the Declaration, was mailed to the Committee on 15 February 1967. This resulted in a voluminous correspondence and a quite radical redrafting of the Declaration. This second tentative draft was mailed to the Committee on 11 January 1968, together with a ballot on 12 questions, each offering two alternatives concerning certain principles or wordings of portions of the Declaration. The answers to these questions clarified some issues, but revealed, at the same time, unresolved ambiguities. Furthermore, in the endeavour to leave nothing to inference and implication but to specify in detail every eventuality, the Declaration became so elaborate that it threatened to be altogether unwieldy. A second ballot, dealing again with 12 alternatives, was mailed out on 10 July 1968. The last answers to this ballot were received by 15 October 1968 but some of the suggestions for improvement were again so drastic that still another, fortunately final, ballot in December 1968 became necessary.

There are two reasons why such a detailed history of the work of the Committee is here given. The first is to show why the Committee (which conducted all of its negotiations by mail) required more than two years to complete its assigned task. Secondly, to indicate the great care with which the exact wording of each individual statement in the draft Declaration was worked out.

The Chairman of the Committee (Professor Mayr) is submitting separately a set of personal comments in which he attempts to explain the nature of the difficulties which the Committee encountered in its deliberations.

Recommendations on procedure

The Committee recommends that the new Draft Declaration not be voted upon by the Commission, at this stage. Instead, we suggest that it be sub-

mitted to the members of the Commission for a two-months study period during which they may send their comments or suggestions to the Chairman of the Committee (Dr. E. Mayr, Museum of Comparative Zoology, Cambridge, Massachusetts 02138, USA) who, in turn, will submit these suggestions to the Committee for its decision. After the Committee has voted on such suggested modifications, the members of the Committee feel that they will then have discharged their obligations "to draft an interpretative Declaration on Article 23(b)", as they were instructed at the time when the Committee was appointed. That final draft should go to the Commission as a regular Voting Paper to be executed within a specified three month period.

Finally, some of the members of the Committee want it to be known that their participation in the work of the Committee does not in any way constitute a full endorsement of the principle of Limitation. Even though some members of the Committee feel strongly that the new Declaration on the Statute of Limitation is an enormously important contribution to stability and to the simplification of nomenclatural procedure, others still feel that in their taxonomic groups the Statute of Limitations is unnecessary and apt to produce considerable difficulties.

(Signed) W. I. Follett
J. Forest
A. Kaestner
K. H. L. Key
R. V. Melville
P. E. S. Whalley
Ernst Mayr, Chairman

Explanatory Comments

By Ernst Mayr (*Chairman, Committee for a Declaration on Article 23(b)*)

This Committee has worked for a period of over two years to overcome various difficulties in the original wording of Article 23(b). In order to facilitate voting by the members of the Commission, it may be useful to pinpoint some of the difficulties encountered by this Committee and to explain how it attempted in the final wording to overcome these difficulties. This is a personal statement by the Chairman, which has not been voted upon by the Committee.

(1) Need for a statute of limitation.

Although this was not part of the mandate of the Committee, it nevertheless considered the question whether a Statute of Limitation is really necessary or whether Article 79 (Plenary Powers) would be able to handle the suppression of unused names equally well. A study of this question revealed very quickly that the needs in active and inactive areas of zoology are strikingly different. When there are only one to two specialists for a higher taxon, stability can be maintained through Article 79. The great weakness of Article 79, however, has been that it does not prevent irresponsible authors from introducing forgotten names into the literature and from placing the entire burden of saving

the well established name on some other zoologist. This means that someone has to drop his own work, prepare an application to the Commission, get it edited and accepted by the Secretariat (which often requires several years), have it published, and finally voted by the Commission. Even in vitally important cases, such as those of the names of the type genera of universally used families and subfamilies of birds, it has invariably taken more than three years before the issue was settled. When such names are used in hundreds, if not thousands, of publications annually which is, indeed, the case in the ornithological literature, confusion, if not chaos, will reign before Article 79 can take effect.

The strength of Article 23(b) is that an unused senior synonym cannot be re-introduced into the literature until this has been sanctioned by the Commission. This provision, therefore, prevents even a temporary disturbance of stability, and thus upholds the provisions of the Preamble more successfully than Article 79. The all-important difference between the two articles is the automatic prohibition in 23(b) of the revival of an unused name at the expense of a well established junior name. And only such a provision can prevent the inevitable confusion produced by the simultaneous use of two names for the same taxon.

(2) Potential conflict between Priority and Limitation.

A second point taken up by the Committee was whether or not there is a contradiction between the "Law of Priority" (Article 23) and its "Statute of Limitation" (Article 23b). This question is solved by the Preamble which specifies that "the object of the Code is to promote stability . . . etc." and states that the application of priority "under conditions specified in the Code may be moderated . . . etc." Article 23(b) is merely an executive provision of this principle of the Preamble and, therefore, entirely within the spirit of the Code. It is, of course, well-known that the provisions of many laws are restricted by special statutes of limitation. The Statute of Limitation of the Code is strictly within the traditions of law.

(3) The importance of upholding the stability principle of the Preamble.

More and more recent authors have pointed out that zoological nomenclature is part of an "information retrieval system", and that stability is perhaps the most important property of any such system. This is presumably the principal reason for the many recent attacks on "name changing". These attacks are often unjustified, since most taxonomists are as much interested in nomenclatural stability as are other zoologists. Yet, various publications in the last two years have strongly endorsed stability, as well as any provision (such as the Statute of Limitation) that would facilitate the maintenance of stability. (See for instance Long and Smith, *Bio-Science* May 1966, and for a more radical proposal Howden, Evans, and Wilson, *Systematic Zoology*, 1968, p. 188.)

(4) Major weaknesses of the current Article 23(b).

Correspondence among the members of the Committee revealed a series of

major weaknesses in the current wording of the Article. These will be taken up one by one.

a. *Misplaced emphasis.* The ultimate objective of the Article is the promotion of stability by protecting generally used junior names against the revival of unused senior synonyms. Unfortunately, as the Article is now phrased, this objective is achieved only indirectly because the Article concentrates on the suppression of the senior synonym. This ill advised emphasis on the rejection of the senior synonym instead of on the preservation of the well established name misled many zoologists and obscured many discussions. The original proposal of a Statute of Limitation (*Copenhagen Decisions*, p. 119-122) had avoided this weakness and so had the Bradley draft (1957, *Bull. Zool. Nomen.*, 14: 43). The new Declaration emphatically and unequivocally concentrates on the preservation of the well established junior name.

b. *Burden on the Commission.* The criticism of Article 23(b) that was made most frequently is that it places too great a burden on zoologists as well as on the Commission by its provision that every zoologist who discovers a forgotten name "is to refer it to the Commission". This provision was criticized almost unanimously by our correspondents. The present generation of animal taxonomists is trying to get away from the excessive pedantry and ritualism of many taxonomists of the past generation. The busy zoologist finds it extremely bothersome to have to go through all the motions of carrying an application to the Commission, and guiding it on its thorny path until final suppression is achieved. A formulation that would provide automatic protection of generally used names would greatly reduce the work load of the Commission. Considerations such as these induced the Committee to choose the proposed wording. The proposed automatic procedure has the advantage that it limits involvement of the Commission to difficult and controversial cases and frees it from the time consuming and expensive consideration of the numerous cases in which the ultimate decision of the Commission is a foregone conclusion.

The new automatic provision also eliminates the need for involvement of the Commission in the suppression of *nomina dubia*. It always seemed inefficient to have to go through the entire procedure of an application, ultimately culminating in an Opinion, in order to get rid of a dubious, usually unidentifiable name, merely to prevent that this name might some day be revived as the senior synonym of a universally used junior name.

c. *Needs of different fields of zoology.* It is evident that the needs are very different in those areas of taxonomy in which a given name may be used hundreds of thousands of times in a single year, and other areas of taxonomy where a name may not be used more often than a single time in 50 years. For this reason the Committee decided to define quite rigorously the term "in general current use". The qualification that a name must be used by at least 5 authors in at least 10 publications during the specified period will automatically exclude the inactive areas of zoology. It is in these areas that most of the specialists work who had misgivings about the usefulness of Article 23(b). On the other hand, there is evident need for a statute of limitation in the more active branches of zoology. It is hoped the chosen wording will provide stability for these areas while allowing for the strict application of priority in the taxonomically

inactive areas.

In this connection the Committee gave very serious consideration to the vote adopted by the XIIth International Congress of Entomology, to exempt entomology from the application of Article 23(b). The members of the Committee were asked to cast their ballot on one of the two alternatives stated in the following question:

"In order to resolve the difficulty caused by the extremely different needs of very active and very inactive taxonomic groups, do you consider it preferable
"(1) to recast Article 23(b), as in the above Draft Declaration, so that the provision itself allows for the problems of very inactive groups, or

"(2) to adopt the solution proposed by the International Congress of Entomology, to exempt specified higher taxa from the application of Article 23(b) (as modified in the Draft Declaration)."

The Committee voted 6 to 1 in favour of alternative 1, evidently feeling that it would be unwise to have different rules of nomenclature for different taxa.

(5) Minor weaknesses in the current wording.

In addition to these major points, there were also some additional minor weaknesses in the 1961 wording of Article 23(b).

(a) *Forgotten versus unused?* The choice of the word "forgotten" was severely criticized because many of these senior synonyms had not been strictly forgotten. Although never applied to a taxon, they had nevertheless been listed in nomenclators and other compilations and lists of names. To meet this criticism, the proposed Declaration avoids the term forgotten and instead places strong emphasis on the question whether or not a name was truly "used," in other words applied to a taxon. With the new emphasis on the junior name, there is no longer any danger that somebody might mistakenly assume that a name would lose its validity merely because it was not used for a period of 50 years. The new wording of Article 23(b) completely precludes such an interpretation.

(b) *Definition of the 50-year period.* Many attempts were made by the Committee to define the 50-year period in such a way that it could not be misinterpreted. By adopting the word "*when*" it is now made quite clear that the 50-year period dates backward from the particular moment at which a zoologist considers the possibility of applying Article 23(b) to a given name. Keeping this in mind should preclude any possible misinterpretation of the 50-year period. In most cases the crucial moment is when a taxonomist recognizes that an older name applies to the same taxon as the generally used junior name, in other words when he realizes an older name is a senior synonym of the younger name. The question whether or not someone else might have previously recognized the synonymy (without using the senior name) becomes irrelevant under the new formulation.

(c) *Primary literature.* The task of defining the term "Primary Literature" unambiguously proved to be the most difficult task of the Committee. Works in which all names are clearly attached to well described and well recognizable taxa cause no difficulties, they clearly qualify as primary literature. Other works which consists of mere lists of names likewise cause no difficulty, they

clearly do not qualify. Unfortunately, there are some publications, for instance certain catalogues, which are a mixture of an uncritical listing of names and of critical attachment of names to taxa. For this reason, the Committee in its final draft abandoned the attempt to define "primary literature" and to give examples of such literature, and instead, proposes to adopt the principle that "usage" of each name in each of its published occurrences be decided on the merits of the particular situation. A name qualifies as being "used" only if it is clearly applied to a taxon. There was great temptation to use the phrase "to a recognizable taxon", but the Committee decided to avoid this subjective formulation.

The Committee was fully aware of the fact that it will remain doubtful in certain cases whether a name was truly "used", that is "applied to one or another particular taxon as its presumably valid name" or merely "listed in a list of names". Such cases will have to be referred to the Commission. In the case of junior names in general current use, a few doubtful situations will often be irrelevant if the name has been used in many more than 10 publications. It is only in the comparatively few cases when a name has been used, let us say 10-15 times, that the precise determination of "used" becomes crucial.

(6) Time of coming into effect.

In its major provision, the protection of universally used junior names against the revival of unused senior synonyms, there is no change whatsoever between the original Article 23(b) of the Code and the provisions of the new Interpretative Declaration. Only this purpose is now expressed positively (protection of junior name) rather than negatively (suppression of the unused senior name). There is therefore no need in the Declaration to make reference to the coming into effect of Article 23(b). It came into effect with the Code on November 6, 1961, and has not since been repealed, some contrary claims or impressions notwithstanding. Only the Congress has the authority to repeal Articles in the Code.

The Declaration, however, does affect two matters of great importance in the application of Article 23(b), the interpretation of various terms (such as "universally used", "unused", "50 years", etc.) and the procedure of application. These new interpretations should not be adopted retroactively and the Committee suggests January 1, 1970, as the date on which the new interpretation is to come into effect. Any zoologist having doubts as to the application of Article 23(b) will have to turn to the Commission, in the same way as he would do to resolve doubt as to any other provision of the Code.

(7) Additional Provisions.

The provisions V, VI, and VII are in line with the usual practices of the Commission and are not apt to become a source of controversy.

(8) Only time can tell whether Article 23(b), as interpreted in the new Declaration, is workable. Unquestionably, some cases will turn up which will have to be referred to the Commission. Yet, the number of such cases is apt to be a small fraction of all the instances where the Statute of Limitation is invoked. There is good reason to believe, particularly in the more active branches of

zoology, that the availability of this Statute, now rigorously defined, will help stability and greatly ease the burden of the working taxonomist and of the Commission.

Members of the Commission were asked to comment on the draft by 19 May 1969. These comments fell into two groups: those that proposed changes in the wording of the Article were circulated to the members of the Committee and voted on—those that were accepted by a majority of the Committee being incorporated in the final draft of the Declaration. The other group of comments concerned the principle of the Article itself, and whether it should or should not be retained in the Code (a question that can, of course, only be finally settled by the next International Congress of Zoology).

The comments in this latter group were as follows.

Dr. Per Brinck (13 March 1969). "Among the insects there are still many families which have not been worked on for more than 50 years or which have been studied by only one or a few people during this time. Therefore, it is well known that several 'unused' names, placed in the catalogues on the opinions of 18th and 19th century authors, represent good species, to be interpreted by still existing syntypes—when somebody starts working on them. The same applies to some 'nomina dubia' which are dubious in that meaning only because there was no recent work done on them. Therefore, it is important that age and unuse do not *per se* disqualify a name. As far as I can see your Declaration fully meets this basic condition.

"Thus, it is most important and successful that the Declaration clearly distinguished between active ('general current use') and inactive fields in zoology. This should, I think, satisfy the entomologists who took the vote to exempt insects from the application of Article 23(b)."

Dr. L. B. Holthuis (9 April 1969). "After receiving the new version of Article 23(b), recently submitted by Professor Ernst Mayr's Committee, I have tried to formulate my views on this new wording. When I had finished I found, however, that a great part of my comments dealt not with the new wording but with the article itself and therefore were more appropriately directed to the Commissioners than to the Article 23(b) Committee. Actually only par. 13 of my comments deals with the wording of the new draft. Therefore I have thought it best to send a copy of my comments to both the Commissioners and the Committee members. I will be glad to give additional information on eventual obscure points in my statements. The new text of Article 23(b) as submitted by the Committee presided over by Dr. Mayr forms a considerable improvement over the old version, and many of the ambiguities and obscure expressions that have been cleared up. The Committee deserves all praise for the amount of time they have given to this project and for the conscientious way in which they have dealt with their task.

"2. The composition of the Committee is, in my opinion, a guarantee that the result is the best that can be expected under the circumstances. The members are not only specialists in widely differing groups of the Animal Kingdom, but also hold very diverse opinions about the feasibility of the Article itself, and have very critically examined all sides of the problem.

"3. I have the greatest admiration for the way in which the Committee

worked and how, after ample discussion, it arrived at a unanimously approved wording of the new text. The fact that those members who are not in favour of having Article 23(b) in the Code and would rather see it deleted entirely are of the opinion that, if it is to be retained in the Code, the present wording is the most acceptable (or the least unacceptable) one to them, is also of very great value.

"4. Unfortunately, after having carefully studied the text and after trying it out on some concrete examples, I do not believe that this article is necessary or even useful for maintaining stability of zoological nomenclature and in my opinion it may lead to endless difficulties and controversies if it is put to use. In my opinion, everything expected from Article 23(b) can be done far better, far more efficiently and far more definitely under Article 79 of the Code (the Plenary Powers article). I therefore take the side of those members of the Committee who prefer total deletion of Article 23(b).

"5. Apart from criticisms of the wording, my objections to Article 23(b) as it now stands are four in number, as follows: it is

- (a) superficial, because it does not distinguish between beneficial, indifferent and harmful cases;
- (b) inadequate, because it cannot deal with cases involving more than two names;
- (c) ineffective, because easily evaded and incapable of ensuring final stability;
- (d) misguided, because responsible zoologists are put to as much trouble as irresponsible ones.

"6. *Superficiality*.—Article 23(b) is based solely on usage and is not selective on the most important point, namely whether a change of name is (a) harmful, (b) indifferent, or (c) beneficial. The discovery of an unused name as defined in the new wording of the Article is not necessarily harmful. In many cases neither name has any strong advantage over the other and the name-change belongs to the second (indifferent) category. An example of such a case would be one in which the junior name, though frequently used, is based on a type of doubtful identity, while there is no doubt as to the identity of the type of the senior nominal species. Other examples arise when the junior name has one or more doubtful senior synonyms that are younger than the "unused" name, and so on. Beneficial name changes may occur when the discovery of an "unused" senior synonym can be used to end a controversy over two junior synonyms. An example of this sort of situation is given by the case of *Alpheus ventrosus* H. Milne Edwards (1837), which was thought by some workers to be a junior synonym of *Alpheus lottini* Guérin (1829), while other workers either did not accept the synonymy or dated Guérin's species from 1838. The discovery that *Cancer sublucanus* Forskål, 1775, is a still older synonym solved the entire problem, for there is no doubt of either the identity or the date of publication of Forskål's species. In some cases the younger and currently used name has been applied to the wrong taxon or to several wrong taxa. Here the discovery of an older, unused synonym may serve to get rid of a severely compromised name, or to avoid the necessity of switching a well-known name from one taxon to another.

"7. Article 23(b) leads to the automatic rejection of the senior synonym in

both beneficial and indifferent cases, so that in such cases the Plenary Powers may have to be used to save names that are perfectly valid under Article 23(a). This is to me a highly unnecessary complication, caused solely by the introduction of Article 23(b).

"8. *Inadequacy*.—Article 23(b) deals only with cases in which two synonyms are involved and does not take more complicated situations into account. It must surely make an enormous difference whether a species has been known exclusively by a single binomen over the last fifty years, or whether a number of synonyms has been in use for it. The discovery of an unused synonym would generally be far less harmful in the second case than in the first. In the second case, such a discovery might be of indifferent or even beneficial effect. There are even cases in which the discovery of a third, intermediate, synonym validates an unused senior synonym, as illustrated by the following example: *A-us albus* White, 1775, has not been used for its taxon since 1900; *A-us niger* Black, 1900, has been used forty times since 1920. *A-us albus* White is, in consequence, an 'unused senior synonym'. But now it is found that *A-us cinereus* Gray, 1850, a name used three times since 1919 by one author, is a synonym of the other two names. It is not an 'unused senior synonym' and thus must replace Black's name. However, it follows that *A-us albus* White, 1775, is not an unused senior synonym in relation to *A-us cinereus* Gray, 1850, because *A-us cinereus* has not been used by five authors in the last 50 years. Thus *A-us albus* White, 1775, becomes the valid name even though it had at first been rejected. This shows that unused senior synonyms can never be permanently got rid of unless they are suppressed under Article 79. I fear that many such complications, not now foreseen, will arise in the application of Article 23(b).

9. *Ineffectiveness*.—Under Article 23(b) as now drafted, it remains possible for a zoologist (responsible or irresponsible) to revive a forgotten name. If the zoologist discovers the identity of a forgotten species, he may revive the name and redescribe the species without saying anything about its synonymy. In this way he validly re-introduces the name. If in a later publication, the same or another zoologist synonymizes the re-introduced name with others, even if they are in current use, the older name cannot be rejected, because it has been applied as the valid name of a taxon once in the last fifty years. If the author who re-introduces the name does not say that he thinks it to be a synonym of a name in general current use, he has not violated Article 23(b) and it can never be proved whether or not he acted in good faith. In addition, a name once rejected as an unused senior synonym can immediately be revived (unless suppressed under Article 79 for the purposes of the Law of Priority) by any author who claims that the name belongs to a different taxon from the one whose name was thought to be a threatened junior synonym. Such an author has a perfect right to use the 'unused' name; and his action obliges those who recognize the new synonymy (or the new meaning of the name) to follow him. By using the name in a different sense from that previously given to it, he has validly used it and it is no longer an unused name.

"10. Article 23(b) cannot by itself ensure final stability. If an unused name

is discovered and rejected under Article 23(b), it still remains a potential threat to stability, because the moment that a legal use of the name within the last 50 years is discovered, the name is re-introduced and must be used (unless Article 79 is resorted to). Under Article 79, on the other hand, once a name is suppressed it is definitely ruled out and cannot threaten stability thereafter.

"11. It has been said that Article 23(b) takes effect immediately, while under Article 79 an elaborate procedure has to be followed, and that so much time elapses before the decision of the Commission is known that confusion, if not chaos, will result before the Article can take effect. This also is untrue, since Article 80 of the Code rules that existing usage is to be maintained between the discovery of a harmful name and the publication of the decision of the Commission. Here too, I do not see that Article 23(b) has the slightest advantage over Article 79.

"12. *Misguidedness.*—One of the arguments that has been repeated ad nauseam is that Article 23(b) places the burden of proving that an older name must be used on the 'irresponsible authors introducing forgotten names'. This has very much the look of a piece of demagoguery to fool the general zoological public and is quite untrue. Any responsible author, whether he wishes to introduce or reject an old forgotten name, is in both cases obliged by Article 23(b) to go to the trouble of finding out whether or not this name has been used in the last 50 years, before it can be declared an 'unused name'. It is the author who states that a name is 'unused' without going to this trouble who is truly irresponsible. Here again, Article 23(b) has no advantages over Article 79.

"13. Now I should like to comment on the wording of Article 23(b):

"(1) First, a minor point: the word 'putatively' was entirely unfamiliar to me and I had to look it up in a dictionary. The same may well be true for many zoologists whose language is not English. Would it not be preferable to have a better known word of the same meaning here (such as 'supposedly'), if the new wording is to be incorporated into the Code?

"(2) In my opinion, a name that has been used by 5 authors in 10 publications within the last 50 years can hardly be termed 'in general current use', especially in view of the current fashion of publishing minor papers with long lists of co-authors. If the definition of general current use be used by at least 30 authors (exclusive of co-authors), regardless of the number of publications, I think we should be closer to the truth.

"(3) The definition of 'unused' will lead to endless controversies. The expression 'applied to a particular taxon' may also lead to difficulties. An author may list and discuss all the known species of a genus, including those that he has not seen, some of which he might consider dubious species. Is he to be considered as having applied the names of the species that he did not see to particular taxa? What is the position of the names of the species that he considers dubious, especially if he does not clearly state his opinion, but allows it to appear by implication? I foresee endless discussion about the

words 'applied to a particular taxon' and other expressions in the Article. What, for instance, is the position when an author places a name in synonymy and discusses the type at length in the text, perhaps with some such remark as 'Mr. Soandso considers this to be a subspecies, but I do not'?

- "(4) Paragraph (viii) does not make it clear that the old wording of Article 23(b) is entirely cancelled. Some zoologists might conclude that the old wording is in force for names discovered between 1960 and 1970, which would be most confusing in view of the obscurity of the old wording and the number of different interpretations that have been placed upon it.

"14. I fear that the application of Article 23(b) will reveal more flaws, in addition to those discussed above, which cannot, so far as I can see, be avoided by any change in the wording. It is my sincere belief that stability and uniformity of nomenclature will be better served by deleting Article 23(b) and relying on Article 79. With Article 79 we can each use our own personal sound judgment as to whether or not a case needs to be dealt with. We do not have to count usages or define what constitutes usage, and we avoid endless disputes about the interpretation of the various definitions in Article 23(b).

"15. There need be no misunderstanding about whether the Commission has or has not the authority to propose the deletion of this Article. Mr. R. M. Buller, the legal adviser to the Commission, has been consulted on this point. In a letter to the Secretariat dated 21 June 1967 he said that in his opinion 'Article 23(b) can either be deleted from the Code or reduced to the status of a Recommendation'. I would advocate total deletion, because to reduce Article 23(b) to a Recommendation would require drastic re-drafting of the whole. I believe that the last paragraph of the Preamble, backed up by Article 79, is a sufficient guarantee of the stability of nomenclature."

Dr. H. Lemche (14 April 1969). "It was to me a simple idea when, in 1948, Professor Bonnet and I independently of each other proposed a limit to the duties of taxonomists to look up forgotten names. Likewise, it was good to see the result of the recent careful work by our Special Committee on this question (Article 23(b))—but the receipt of Dr. Holthuis' comments has made me feel uneasy. I consider it a great achievement to have an Article 23(b) if it is really acceptable to the general zoological public. But I am against introducing any rule tending to split up zoologists into opposing parties—which from Dr. Holthuis' comments appears a likely consequence if we do not find ourselves uniting into a common effort to reach unanimity. This letter, therefore, is prepared for showing that the dangers as described by Dr. Holthuis may be exaggerated, and that the advantages are still much more important than is generally realised. May I take Dr. Holthuis' four main points one by one.

"(a) *Superficial*. The 'harmful' cases are those to be ruled out, as done by Article 23(b). The 'indifferent' ones have little interest. The 'beneficial' ones are rare, but in order to be beneficial they must enter a situation that is already ripe for being presented to the Commission—and so they should be.

"(b) *Inadequate*. The described kind of complex cases are rare and can be remedied by continuing usage until it is demonstrated that the rule does not

apply. We might else as well rule that no taxonomist is to describe a new species until he has run through all the most rare books in the world to make absolutely sure that no senior name exists. Such a procedure is ideal, but no scientist can do more than his very best, and the Rules shall not ask for the impossible.

"(c) *Ineffective*. No one can prevent misuses by rules, but when misuses are discovered, they may be remedied by the Commission—in future as in the past. Authors in good faith should have their actions accepted.

"(d) *Misguided*. The time has gone where a taxonomist could afford also to be a bibliographer. Though older than Dr. Holthuis, I have gravely felt the enormous burden put on me as a taxonomist by the old literature to be studied for determining the correct name of each species treated. The continuous flow of new old and forgotten names that pop up is evidence that the task has not been mastered even in the past. Thus my experience has brought me to admire the enormous knowledge and skill exposed by Dr. Holthuis in mastering his vast field of crustacean taxonomy and literature—which means that I cannot consider Dr. Holthuis an average taxonomist. But the explosion in literature in present years will prohibit any thirty years younger 'Holthuis' from repeating the performance. I am saying this as a very serious warning. We *must* find means of making it more easy for the next generation. We must make it unnecessary for, say, an Indian zoologist to worry about whether or not there exists a 'Programm des Jahres 17—der Unterrealschule des Dorfes Kleinhof in Nieder-Hessen' where some small soil invertebrate was first vaguely described.

"Therefore, I do not consider Article 23(b) misguided. It aims towards those who have not realized that what they consider ideal for taxonomic work will become for the next generation a Fata Morgana in the sky—completely out of reach. Article 23(b) is to keep the trail free to those who want to do actual research without hollow formalities. We must find means to permit the next generation to start from a closer and cleaner platform than the rugged and unacceptable one of forgotten papers from more than two hundred years ago. I see Article 23(b) as a remedy to that end, and that is why I am interested in getting it through in the best possible formulation—whatever this one might be.

Dr. O. Kraus (12 May 1969). "The present discussion on a new version of Article 23(b), especially the 'Report of the Committee on Article 23(b)', has been carefully considered by the Deutsche Zoologische Gesellschaft.

"As one of the Vice-Presidents I am instructed and authorized (decision by the Council) to speak officially on behalf of this Society, so far as matters in the field of nomenclature are concerned.

"Therefore, I have to inform you that the present draft, as worked out by E. Mayr's Committee mentioned above, is *strongly supported* by the Zoologische Gesellschaft. This support especially concerns the spirit and the guiding principles of the draft."

Dr. do Amaral (6 April 1969). "I am glad to advise that, after having carefully read both documents, I feel that the Declaration represents a very welcome contribution to nomenclatural stability at least in my rather restricted taxonomic group, that is, Herpetology."

Dr. T. Jaczewski (10 May 1969). "Having received your circular letter of April 9, 1969, and your comments on the proposed next text of Article 23(b) of the Code, we reconsidered here the whole matter in consultation with a number of zoologists working on various taxonomic groups, in particular with members of the staff of the Institute of Zoology, Polish Academy of Sciences, as well as with fellows of the Polish Zoological Society and of the Polish Entomological Society. We arrived at the following conclusion:

"Although the new text of Article 23(b), proposed by the Committee headed by Professor Mayr represents an unquestionable improvement of the original wording, we are of the opinion that stability of zoological nomenclature would be served best by complete deletion of Article 23(b) from the Code. We share your criticism and your doubts concerning Article 23(b) and we support your proposition formulated in this connection in paragraph 15 of the comments enclosed in your letter of April 9 1969."

DECISION OF THE COMMISSION

On 18 August 1969 the Members of the Commission were invited to vote under the Three-Month Rule on Voting Paper (69)39 either for or against the following proposals:

- in *Part 1*, accepting the draft Declaration embodied in the Report of the Committee as a satisfactory new text of Article 23(b);
- in *Part 2*, requesting the XVII International Congress of Zoology to delete the existing text of Article 23(b) and replace it by the text of the present Declaration;
- in *Part 3*, the proposition that the present Declaration come into force as from 1 January, 1961;
- in *Part 4*, requesting the XVII International Congress of Zoology to delete Article 23(b) from the Code.

The following Secretary's note accompanied Voting Paper (69)39.

"In March, 1969, members of the Commission received a draft Declaration incorporating a new draft of Article 23(b), prepared by the Committee appointed by the Acting President of the Commission (Dr. L. B. Holthuis) for the purpose. The draft Declaration was accompanied by a commentary and a report on the work of the Committee, both prepared by its Chairman, Professor Ernst Mayr. Commissioners were invited to send their comments on the draft to Professor Mayr within two months.

"2. At the beginning of June, 1969, Professor Mayr circulated the comments received from Commissioners to the members of his committee, calling for votes on the various points raised. As a result of this ballot he was able to prepare a final draft of the Declaration (in English) and asked the Secretary to put this draft formally to the Commission for a vote. It has not been considered necessary to seek the formal approval of the Acting President for this step, since he has been kept in touch with the work of the Committee at all stages. The vote is divided into four parts, explained below.

"3. The draft Declaration circulated with this Voting Paper is in effect the final report of the Committee to the Commission. In *Part 1 of the Voting*

Paper you are therefore asked to indicate whether or not you accept this report as providing a satisfactory new text of Article 23(b).

"4. *Part 2 of the Voting Paper* deals with the status of the Declaration if it is accepted by the Commission. Under Article 78(a) a Declaration is a provisional amendment to the Code requiring ratification by an International Congress of Zoology before it can be incorporated into the Code. You are therefore invited to vote in this part for or against the proposition that the XVII International Congress of Zoology be requested to delete the existing Article 23(b) and replace it by the text of the Declaration.

"5. *Part 3 of the Voting Paper* deals with the date on which the Declaration comes into force. Since its purpose is to replace the existing text of Article 23(b) it ought to bear the same effective date as that text. Otherwise, the status of unused senior synonyms discovered between 1 January 1961 and 31 December 1969 will be different from that of those discovered after the latter date—and will, moreover, be uncertain because the text of the Article to be applied to them is of uncertain meaning. Much confusion would be caused by having one statute operative for the period 1961–1969 and another for the period after 1969. Thus, although the new text can only come into being on the date of its publication, its effect should be retroactive to 1 January, 1961. If this step, which is necessary for practical reasons and for reasons of simplicity, is not taken, the Commission will not have fulfilled its duty to provide an interpretation of Article 23(b) applicable to the whole lifetime of that Article.

"6. Fourthly, a number of Commissioners have expressed opposition in principle to any form of a "Law of Conservation". These members, while perhaps ready to accept the Committee's report as an acceptable version of the article, ought to be allowed to show that this does not imply their acceptance of the principle behind it. Moreover, it may be important in the future to have a register of the extent of the opposition to the principle at this time. In *Part 4 of the Voting Paper* Commissioners are accordingly given an opportunity to vote for or against the proposition that the XVII International Congress of Zoology be requested to delete Article 23(b) from the Code.

"7. Finally, if the Declaration is to be published before 1 January 1970, it is essential that all votes be received in good time. Although the closing date is 18 November 1969, it would be greatly appreciated if you could return your vote before that date, and in any case as early as possible."

At the close of the prescribed voting period on 18 November 1969 the state of the voting was as follows:

Part 1. Affirmative votes—sixteen (16), received in the following order: Melville, Binder, Lemche, Mayr, Eisenmann, Vokes, Simpson, Obruchev, Forest, Evans, Brinck, Tortonese, Kraus, Ride, Bonnet, Alvarado.

Negative votes—seven (7): China, Holthuis, Munroe, Mertens, Jaczewski, Starobogatov, Sabrosky.

Part 2. Affirmative votes—fourteen (14): Melville, Binder, Lemche, Mayr, Eisenmann, Vokes, Simpson, Obruchev, Forest, Brinck, Tortonese, Kraus, Ride, Bonnet.

Negative votes—eight (8): China, Holthuis, Munroe, Mertens, Evans, Jaczewski, Starobogatov, Alvarado.

Part 3. Affirmative votes—sixteen (16): Melville, Binder, Lemche, Mayr, Eisenmann, Vokes, Simpson, Obruchev, Forest, Evans, Brinck, Tortonese, Kraus, Ride, Bonnet, Alvarado.

Negative votes—six (6): China, Holthuis, Munroe, Mertens, Jaczewski, Starobogatov.

Part 4. Affirmative votes—thirteen (13): Melville, China, Holthuis, Vokes, Munroe, Mertens, Forest, Evans, Jaczewski, Starobogatov, Brinck, Bonnet, Sabrosky.

Negative votes—ten (10): Binder, Lemche, Mayr, Eisenmann, Simpson, Obruchev, Tortonese, Kraus, Ride, Alvarado.

Voting Papers not returned—one (1) Do Amaral.

The following comments were provided by Commissioners with their returned voting papers.

Dr. Eisenmann. "My vote in favour of Parts 1 and 2 depends on a majority voting in favour of Part 3. If a majority were to vote against Part 3 too much confusion would result in having two differently worded statutes of limitation in effect, so I would prefer to keep the present Article 23(b) tentatively. I believe that if Part 3 is adopted the words in the first line of the [draft] Declaration 'As from 1 January 1970' should be deleted or better changed to '1961' for they would give the impression that the Declaration is not retrospective (even if the words 'after 1960' are included) despite an affirmative vote under Part 3 of the Voting Paper. The Commissioners understand that coming into being in 1970 is not to affect retrospectivity, because this is made clear in the Voting Paper, but zoologists reading the amended Code and seeing only the *language* adopted, will not know this. I therefore *strongly* urge that if retrospective effect is voted under Part 3, the word '1970' be replaced by '1961'. Keeping '1970' can add nothing but confusion if Part 3 is adopted and is useful *only* if the Declaration is *not* made retrospective."

Dr. Evans. "I consider the new text of Article 23(b) to be a marked improvement on the existing text and I support making the Declaration retroactive to 1 January 1961 and operative until the meeting of the XVII International Congress of Zoology. I am opposed, in principle, to any form of a 'Law of Conservation' and I would strongly support a request to the XVII International Congress of Zoology to delete Article 23(b) from the Code—hence my vote against Part 2 of the Voting Paper."

Dr. Starobogatov. "I agree completely with Dr. Holthuis's comments. The new text of Article 23(b) causes new difficulties. For example, does the mentioning of a name without comments in a faunistic list, based on the original material, constitute usage in the sense of Article 23(b)? The presence of Article 79 makes Article 23(b) unnecessary."

Dr. Ride. "I am of the opinion that Article 23(b)(ii) will need redrafting in due course but agree that the proposed text should be adopted in its entirety and put to a period of usage before the next Congress."

Dr. Munroe sent the following comment on 29 August 1969, after the close of the Voting Period. "I wish to place the following comments on record in

connection with my negative vote on the proposals relating to Article 23(b).

"I cast a negative vote on these proposals with real regret for two reasons: first, I have been a supporter of the principle of conservation since the Copenhagen colloquium; and, second, I am satisfied that the majority of the Canadian zoologists with whom I have corresponded are in favour of some workable expression of the principle of conservation.

"However, I consider that the present proposals will not only fail to be accepted in practice but that they will prove very difficult and inconvenient to work under, for the following reasons:

- "1. The period of 50 years mentioned in item ii is too short in many zoological groups. In Lepidoptera, for example, many names go uncited for substantially more than 50 years even though their application is understood and they have in no sense been forgotten. The safeguard provided by item i is only partial because usages might vary in different geographical areas.
- "2. The requirement to show that a name has not been used by five different authors in at least ten publications before the law of priority is applied is not only a very onerous one, but it is virtually impossible to achieve with certainty particularly in view of the wide-open provision of item iv. Even if a taxonomist established to his satisfaction that a name had been used by less than five authors and in less than ten publications during the stipulated period, subsequent examination of literature might well expose additional citations which would upset the synonym that he had proposed, under the second sentence of item ii. There is therefore an inherent source of instability in the proposed arrangement. Both the difficult task of a negative proof and the instability will be frequent rather than rare in a majority of animal groups.
- "3. Both the practical problem and the climate of opinion differ widely for workers in different groups, the present proposals make no provision for different arrangements to suit these different circumstances.
- "4. The establishment of a 'fifty years before present' criterion for usage means that the status of names can change from one day to the next. This is particularly a difficulty where manuscripts are completed near the end of a fifty-year period after proposal of a rarely-used name. Between submission of a paper for publication and its actual appearance the status of a name may well change and it may be impossible for the author or the editor to predict whether or not this is going to be the case. The difficulty of course would be avoided if the status as a nomen oblitum were determined from a fixed date rather than from a 'fifty years before present' date.

"In my view both the proposed text and the existing text of Article 23(b) are completely unsatisfactory and the prolonged discussion on this subject has led to confusion and loss of support for Article 23(b) rather than a consensus among zoologists. In my view better proposals will be required before an acceptable automatic provision can be drafted and I consider that meanwhile the plenary powers will provide sufficient latitude for the number of significant cases that comes forward. This would particularly be so if efforts could be

directed to streamlining and expediting the procedure for publishing and dealing with cases and if support were given to an acceptable degree of conservation by explicit recommendations as to the type of cases that ought to be submitted to the Commission.

"If an automatic rule is adopted I think it should contain at least the following features not now present in Article 23(b) or the proposed new Declaration:

- "1. The status of a name should be determined as from a fixed date rather than a moving one.
- "2. The onus ought to be on the proposer of a synonym to prove some positive condition rather than to try to prove beyond reasonable doubt a negative condition.
- "3. The period that would determine the status of a name should be much longer than fifty years at least for many groups, and it should be variable to meet the very different circumstances prevailing in different groups, as for instance birds and insects.

"As a minor point I consider that the phrase 'in an abstracting publication, or in a nomenclator or other index or list of names' used in the proposed item iii is still too ambiguous to be capable of certain application, unless these various terms and particularly 'list of names' are precisely defined in an accompanying glossary."

The majority vote in favour of Part 4 of V.P.(69)39 presented an interesting situation. In summary, the Commission had voted (1) to accept the new wording of Article 23(b), (2) to replace the former text by the new text (subject to the authority of the Congress), (3) to give the new text validity as from 1 January 1961, and (4) to delete the Article altogether. This last vote, however, had been presented merely as a means of recording the extent of the opposition to the principle of Article 23(b) at that time. Commissioners might well have felt that they were giving their votes in confidence, rather than for publication. It was for this reason that, on 27 March 1970, Commissioners were asked to vote under the One-Month Rule on V.P.(O.M.)(70)1 for or against the publication of the result of the vote on Part 4 of V.P.(69)39. The voting paper was accompanied by the following note from the Secretary.

Note to accompany V.P.(O.M.)(70)1

"V.P.(69)39, on the Declaration concerning Article 23(b), was divided into four parts. The 4th part called for a vote for or against the proposition that the XVII International Congress of Zoology be asked to delete Article 23(b) from the Code. This proposition received 13 votes in favour to 10 against.

Paragraph 6 of the Note accompanying V.P.(69)39 might be taken to mean that the vote on Part 4 was taken only for the record, in order to "register the extent of the opposition to the principle at this time", and not for publication. It therefore seems proper to ask the permission of Commissioners before publishing the result of the vote.

In considering this question, I would ask you to bear in mind the Commission's majority vote in favour of deletion and the resolution of the XII International Congress of Entomology (see *Bull. zool. Nomencl.* 23 : 259-260).

The Secretariat has obtained legal advice that it would be within the powers of the Commission to request an International Congress of Zoology to delete any Article from the Code. I also enclose a copy of a resolution of the Council of the American Society of Parasitologists to the same effect.¹ I may also point out that it is quite clear that the division of opinion on this subject lies between those who work in groups of animals that have been well studied in relatively recent times and so have acquired a stable nomenclature, such as Mammalia and Aves for example (these are in favour of Article 23b); and those who work in groups that are as yet imperfectly known (for example, many groups of Insecta and other invertebrate classes) where it would be short-sighted to condemn large numbers of senior synonyms of early date and small usage before their value has been properly assessed. Article 23(b) would therefore have the effect of limiting the freedom of taxonomic action of future zoologists, and I am sure that the publication of the vote in favour of deletion would be to the credit of the Commission's reputation for wisdom and far-sightedness."

At the close of the prescribed voting period on 27 April 1970 the state of the voting was as follows:

Affirmative votes—seventeen (17) received in the following order: Evans, Vokes, Melville, Holthuis, Sabrosky, Ride, do Amaral, Obruchev, Tortonese, Munroe, Mertens, Brinck, Jaczewski, Starobogatov, Bonnet, Forest, Alvarado.

Negative votes—five (5): Lemche, Eisenmann, Binder, Mayr, Kraus.

Voting Paper not returned—one (1): Simpson.

The following comments were sent by Commissioners with their votes.

Dr. H. Lemche (31 March 1970). "I strongly urge that this voting be cancelled. A private vote cannot be so treated or rather misused."

Dr. Eisenmann (30 March 1970). "I vote against publication because such publication is likely to confuse the public and tend to prevent a fair trial of the modification or interpretation of Article 23(b), which was noted at the same time. The vote, by a small majority, to ask that the next International Congress of Zoology be asked to delete the Article from the Code has no present legal effect. Amendment of the Code, such as is proposed, requires discussion by the Section on Nomenclature of the Congress, a vote by the Commission there, approval by the Section, and final approval by the Congress (Code, Art. 87).

"Publication of the recent advisory vote (less than two-thirds) has no effect at all at present. The confusion that publication of such votes can occasion is demonstrated by the Resolution of the American Society of Parasitologists, which, quite erroneously, states that Article 23(b) was suspended by vote of the Commission adopted on February 25, 1966. Actually that vote was not presented under the Plenary Power provisions and safeguards, nor did it obtain a two-thirds majority: moreover the Plenary Power does not authorise *general* suspension (in effect a repeal) of a provision of the Code. The Commission was so advised by counsel retained for that purpose.

"The only effect of publication, or indeed of the vote itself, is to put the

¹See p.162.

whole question on the agenda of the next Congress.

"If the majority of the Commission votes in favour of publication, I request that the Secretary publish this letter or a summary, pointing out that Article 23(b) is still in force, and is not suspended, but should be interpreted in accordance with the recent modifying provisions."

The Secretary replied to this on 17 June 1970: "Your letter of 30 March on this subject revealed several misunderstandings.

"First, the Commission is entirely within its rights in adopting a Declaration deleting an Article from the Code.¹ This, which is quite different from suspending the general application of an Article, was accepted by our legal adviser. Such a Declaration comes into force immediately and so remains until the next Congress ratifies, modifies or reverses it.

"Secondly, there is nothing in the existing Constitution—which was ratified by the 1963 Congress in due form—to require a two-thirds majority vote in favour of a Declaration."

Dr. C. W. Sabrosky (5 April 1970). "It seems to me that this is the time when the Commission and the Commissioners must do more than merely agree to publish the results of the vote of 13 to 10 in favour of asking the Congress to delete Article 23(b) from the Code. Certain procedural questions must be decided.

"1. I assume that the 13–10 vote is in effect a directive to the Secretary to present the proposal at the next International Congress of Zoology. It would seem fatuous to vote on the question and not assume that that would be done, if the vote went that way, and it would be a waste of time to vote again on a proposition to specifically direct the Secretary to do what he should do after the first vote carried.

"2. A Congress of Zoology may be far in the future. Certainly, at least as far as I know now, the date is uncertain. What then of the interim period? Do we suspend 23(b) until action can be taken on our request? Do we decline to render Opinions under an Article that we propose to cast out? I believe that we should so direct, and announce that all cases should be presented under the regular Plenary Powers procedure until the question can be settled.

"3. The 'Note to Accompany V.P.(O.M.)(70)1' did not give the vote on the proposed Declaration. Perhaps it was turned down. In any case, in view of the 13–10 vote, should it be published at this time? The 13–10 appears to be, in effect, a motion to table the Declaration in favour of the overriding proposal to delete 23(b) from the Code.

"4. At the time of suspension of cases under 23(b), announcement should be made to make it clear that justified cases, those of real importance, can always be presented under Article 79 of the code ('Plenary Powers').

"5. In passing, I would note that the Secretary's comment on the division of opinion between 'stable' groups such as Mammalia and Aves and the 'as yet imperfectly known' groups of many invertebrates is probably a true general statement, but the division is not perfect. There are priority and anti-23(b)

¹See p. 139 above.

taxonomists in Mammalia and Aves, and there are advocates of usage among taxonomists on invertebrate groups. But the number of species and number of problems involved in those smaller vertebrate groups can hardly justify an Article in the Code that serves the special beliefs of taxonomists in those groups. Their problem cases, when properly justified, can always be considered under Plenary Powers."

Dr. E. Mayr (two letters dated 14 April 1970). *Letter 1*. "In view of the fact that the whole zoological world is eagerly awaiting publication of the exact wording of the Declaration on Article 23(b), I take it for granted that the question of a possible recommendation to the next Congress will be published separately. There is no hurry about this recommendation nor is it even part of our assignment by the Congress. I hope the Secretariat uses sound judgment in not letting anything interfere with the speedy publication of the Declaration."

Letter 2. "After long deliberation I have decided to vote against publication of the informal vote of the Commission on a recommendation to the next International Congress of Zoology for a suppression of Article 23(b) for the following reasons:

"(1) This vote would surely confuse zoologists, who might think that this is a device of the Commission to discredit Article 23(b) at once. The Commission functions as the supreme court of the zoologists and should do nothing to undermine the authority of the Code.

"(2) Publication of this vote might seriously weaken the trust of zoologists in the Commission. They will say: How can the Commission recommend the elimination of a rule that has not even been seriously tested? For this reason, surely, a recommendation to repeal an untested rule would be considered as rash and ill-considered.

"(3) The Secretariat in its various communications to the Commission has brought to the attention of the Commission two votes by groups of taxonomists (entomologists, parasitologists) who favour the deletion of Article 23(b). Other groups of taxonomists have strongly come out in favour of Article 23(b). I was informed last year by the Secretary of the German Zoological Society that his Society had passed almost unanimously a resolution strongly endorsing Article 23(b) and that this resolution had been passed to the Secretariat. If this information is correct why was the Commission not informed of this (and perhaps other similar) resolutions? If it were true that only evidence indicating opposition to Article 23(b) has been transmitted to the Commission but not favourable resolutions, would not this indicate bias by the Secretariat?

"If the vote of the Commission on V.P.(O.M.)(70)1 is in favour of publication of the straw ballot, I demand that it be re-submitted to the Commission in accordance with the provisions of the By-Laws (one of which urges the Secretary to re-submit votes when, in the course of balloting, subject-matter not previously considered is revealed) and that this letter and possibly letters by other members of the Commission, accompanying their ballot, be brought to the attention of the Commission.

"I furthermore propose in such a case an alternate wording of the recommendation: 'The Commission recommends to the next Congress to undertake a careful study of Article 23(b), in order to determine whether it has proven

beneficial for the stability of nomenclature, or rather has either caused more confusion than benefit or has proven unworkable.

"The Commission recommends, furthermore, that—depending on the results of this study—the Congress propose appropriate action which may consist either in the incorporation of Declaration 43 in Article 23(b), or its modification, or its outright repeal'.

"I feel that this wording of the recommendation does not prejudice the issue nor interfere with the prerogatives of the next Congress."

The Secretary replied to these letters on 19 June 1970: "In your first letter of 14 April you ask, in effect, for the decision of the Commission to repeal Article 23(b) to be separated from the decision to accept the Committee's text for the period of the valid life of the Article. I can find no justification for such a procedure and am publishing the entire complex decision in a single document. The course you suggest would, in my view, indicate that the Commission could not make up its mind what it was doing and would be a fruitful source of confusion.

"In your second letter you make three points. To your point (1) I say that the Commission's vote is not a 'device to discredit Article 23(b)'. It is a perfectly legal vote taken in full compliance with the Code and the Constitution and can in no way weaken the authority of the Code or the Commission.

"To your point (2) I say that failure to publish the decision would indeed weaken the Commission's authority. We should be open to the accusation of suppressing evidence because it was not agreeable to a minority of the Commission. Furthermore, how do you expect Article 23(b) to be tested in a short space of time? It can only be tested when its effect on neglected groups becomes clear—and it is always the neglected groups that tend to stay neglected. This demand is unrealistic.

"On your third point, I am indeed sorry that the resolution of the German Zoological Society was not communicated to the Commission with V.P.(O.M.)(70)1. Unfortunately, at the same time I omitted to circulate a resolution by Polish zoologists asking for the deletion of Article 23(b), so the two errors approximately cancel each other out. On balance, however, zoological opinion as made known to the Commission is strongly in favour of deleting the article. I do not agree, therefore, that the situation is as you suggest or that the vote on V.P.(O.M.)(70)1 should be re-submitted.

"I find it difficult to follow your suggestion that the next Congress should undertake a careful study of Article 23(b). What action could the Congress take other than to refer the question back to the Commission? How can the effect of the Article be studied except over a very long period of time as neglected groups come to be revised? Since it is virtually certain that the next Congress will be the last one, to what body would the results of the study be reported? I do not see how your suggestion could be carried out in practice, nor do I see the advantage of postponing a final decision on the Article."

CERTIFICATE

I certify that the votes cast on Voting Papers (69)39 and (O.M.)(70)1 were cast as set out above, that the proposal contained in those Voting Papers has

International Commission, is truly recorded in the present Declaration 43.

R. V. MELVILLE
Secretary

International Commission on Zoological Nomenclature
London
June 1970

ARTICLE 23(b): PROPOSED DELETION FROM THE CODE
(*American Society of Parasitologists, per D. V. Moore, Secretary-Treasurer*)

been duly adopted, and that the decision so taken, being the decision of the

The following resolution, adopted unanimously at the fifty-ninth meeting of the Council of the American Society of Parasitologists, was sent to the Commission by Dr. D. V. Moore on 15 January 1970.

The *Bull. zool. Nomencl.* 23 : 258 (1966) contained a report of the activity of the Commission regarding the clarification of Code Article 23(b), which began as follows: "Article 23(b) has been a most controversial one right from its first proposal by Commissioners E. Mayr and L. B. Holthuis during the XV International Congress of Zoology held in London in August 1958". As a result of divergent opinion, Commissioner Dr. Otto Kraus proposed in November, 1965, that Article 23(b) should be suspended until the end of the next meeting of the Commission, and the proposal was adopted on 25 February 1966 by a vote of 14 to 8. Apparently, Article 23(b) is still suspended.¹

An outstanding action was taken by the XII International Congress of Entomology, which directed the Permanent Committee of the International Congresses of Entomology "to propose and strongly recommend to the International Commission on Zoological Nomenclature that the field of entomology, in the broad sense, be exempted from the provisions of paragraph (b) of Article 23 of the International Code of Zoological Nomenclature. For the purpose of this resolution, entomology in the broad sense is defined as the study of Hexapoda, Arachnida and Myriapoda."

The Committee of the American Society of Parasitologists believes that the exemption of special areas of the field of zoology is not a satisfactory solution of the problem. The establishment of areas of special privilege is objectionable and the Committee holds that the Rules of Nomenclature should be applicable universally to all animal groups. Article 23(b) adversely affects universal acceptance of the Rules:

1. By restricting unnecessarily the principle of Priority, the basis of stability in zoological nomenclature. The Code provides for suspension of the Rules when that action would minimize confusion or injustice.
2. By favouring groups in which few species remain to be described (e.g. the

¹This is not so. Legal opinion was to the effect that the Commission had no power to suspend any article of the Code; see *Bull. zool. Nomencl.* 23 : 266-8 R.V.M.

- vertebrates, less than ten per cent of the animal kingdom), while adding to the difficulties of work with such less well-known groups as the parasitic protozoans and helminths which include numerous as yet undescribed species and many known ones that are seldom mentioned in the literature.
3. By involving decisions of the most subjective nature as to what constitutes "primary zoological literature", and whether the 50-year rule is based on calendar years or dates from the actual time of publication which, in itself, is often difficult to determine.
 4. By providing an opportunity for abuse, either by renaming species although previous naming was known before its 'statute of limitations' even expired, or by deliberately renewing the "copyright" of names by using them before they are "forgotten". Although petty, such abuse could have nationalistic overtones and is to be discouraged.
 5. By adding to the work of many systematists almost insuperable difficulties of literature search, with claims and counter-claims because of matters included in (3) above.
 6. By being impossible to enforce, a power which the Commission lacks. For parasitologists who are necessarily concerned with the systematics of many groups of hosts as well as parasites, conformation of some to the provisions of Article 23(b) and disregarding of those provisions by others would lead to utter confusion.

Because of the above objections, the Committee urgently recommends that Article 23(b) be abrogated.